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EXAMINER

JOHNSON, JERROLD D

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3728

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Please find below and/or attached an Office communication concerning this application or proceeding.

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DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 12 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims initially set forth an “open end” and then set forth structure of an end cap which clearly at least partially closes the “open ends”. The examiner submits that the two expressions are at least somewhat contradictory and that language such as “partially open” or “partially closed” would better reflect the structure set forth.

Claim 12, “between a length” is confusing, and would be better served by “along a length”.

Additionally, the claims set forth a “sleeve”. The Examiner fails to appreciate the appropriateness of the use of this expression which is believed to be most appropriately used when an outer structure encloses an inner structure more fully than what is shown in the two embodiments of the invention. An explanation of the use of this expression would be appreciated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4,5,11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald US 1,286,374.

McDonald discloses the packaging system having first and second constraining walls, and end caps C and D, with end cap D either inherently a folded over structure from the constraining wall A, or at the very least a result of a folding process that would be obvious to one of ordinary skill in the art based on the fact that sheet metal constructions are almost always formed from the folding of a blank.

End cap C extends fully across the width of the second constraining wall B.

However, end cap D is shown having a top corner triangular shaped cutout. Because of the breadth of the expressions "open end" and "extending partially across a width", it is submitted that the cutout renders the end cap as only partially extending across a width of the second constraining walls as to define an "open end". This interpretation is particularly appropriate in view of the use of the expression "open end" as is understood in view of the present invention.

And, as McDonald teaches this structure in end cap D, it is implicit in his disclosure that the same shaped end cap would also be usable for the end cap C.

Accordingly, one of ordinary skill in the art would recognize the benefits of making the end cap C in the shape of end cap D so as to produce a packaging system that was more symmetrical and thus more aesthetically pleasing, as well as a packaging system without exposed sharp corners.

The packaging system of McDonald is inherently capable of performing the intended use set forth in the claims as has been previously set forth in previous Office Actions.

Re claim 2, see binding element E in McDonald Fig. 6. When the end cap D is at this position, the claim limitation is met.

Re claims 4 and 5, McDonald inherently discloses this structure.

Re claim 11, end cap D.

Re claim 12, note the rejection of claims 1 and 2 above.

Claims 3,13,14,16,21,22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald US 1,286,374, as was set forth previously, in view of Jacobsmeyer US Des.415,730 and Examiner's Official Notice.

Re claim 13, McDonald does not disclose a second binding member.

Jacobsmeyer discloses the benefits of perpendicularly disposed binding members so as to secure stacked product.

Accordingly, one of ordinary skill in the art would recognize that the benefits of the addition of another binding member to McDonald that is oriented perpendicular to the binding member E to further secure stacked product on the packaging system.

Re claim 14, note the rejection to claim 1 above with respect to the intended use of which McDonald is inherently capable.

Re claim 16, note the strap E in Fig. 6 of McDonald.

Re claim 21, McDonald does not disclose a second folded end cap.

It is noted that in this claim the second end cap is very broadly set forth as only being an "end portion of the upper extending constraining wall being folded over to form end caps that are adapted to protect end products of the stack and add rigidity to the flat mail sleeve packaging system.

McDonald discloses an end cap C that has been previously set forth as either inherently meeting the folded over product-by-process limitation or obvious in view of the known manner that sheet metal products are made.

It would not be obvious to construct end cap D, as this end cap is movable.

However, the Examiner takes Office Notice that one of ordinary skill in the art would be inclined to fold over the end of the first upper extending constraining wall A at the portion of that wall that is proximate to end cap D in Fig. 6. Specifically, as the folding over of edges in sheet metal constructions is not merely obvious but is the norm so as to impart rigidity and to eliminate potentially dangerous exposed edges, one of ordinary skill in the art would recognize that the edge of the first upper extending constraining wall A should be folded over so as to achieve the rigidity and safety

benefits set forth above. And any folding over of this wall would necessarily meet the claim language of partially extending across the width of the second constraining wall so as to define an opposite facing "open end".

With respect to the binding members, McDonald shows first binding member A, and Jacobsmeyer teaches second binding members, as has been set forth above.

Re claim 22, see constraining wall A.

Re claim 24, see Fig. 6.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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